

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-210775**DATE:** August 9, 1983**MATTER OF:** Mott Haven Truck Parts, Inc.**DIGEST:**

Contracting agency properly canceled advertised solicitation after opening based on cogent and compelling reason where contracting agency did not mail material amendment to all prospective bidders until day before extended bid opening, resulting in inadequate competition.

Mott Haven Truck Parts, Inc. (Mott Haven), protests that the United States Army Tank-Automotive Command (Army), Warren, Michigan, improperly canceled invitation for bids (IFB) No. DAAE07-83-B-A070, for 451 elbow kits. Mott Haven alleges the Army canceled the solicitation after the bids had been opened without a cogent and compelling reason.

We deny the protest.

The IFB was issued on November 29, 1982, with a bid opening date of December 28, 1982. Amendment No. 0001 extended bid opening to January 4, 1983, updated the less restrictive specialty metals preference clause, and divided the total quantity into individual depot shipments.

Mott Haven contends that it should have been awarded the contract because it was the lowest responsive responsible bidder that acknowledged the amendment. The Army responds that on January 27, 1983, the contracting officer canceled the solicitation pursuant to Defense Acquisition Regulation § 2-208(c) (Defense Acquisition Circular (DAC) No. 76-25, October 31, 1980) and § 2.404.1(b)(viii) (DAC No. 76-17, September 1, 1978), because the amendment was not issued in sufficient time to permit all the prospective bidders to consider the information before submitting their bids.

We have held that the authority of a contracting officer to cancel a solicitation is extremely broad and in the absence of bad faith or an abuse of discretion, a decision to cancel a solicitation will be upheld. However, because of the potential adverse impact on the competitive

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bidding system of canceling an IFB after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find that a cogent and compelling reason exists which warrants cancellation.

NonPublic Educational Services, Inc., B-207751, March 8, 1983, 83-1 CPD 232.

The Army reports that on December 27, 1982, Mott Haven contacted the contracting specialist to report that the solicitation contained errors. Amendment No. 0001, which the Army informed Mott Haven would be made, reflected corrections in the IFB to respond to Mott Haven. After the Army executed the standard procedure for processing amendments, on January 3, 1983, the day before the extended bid opening, the amendment was dispatched by ordinary mail to 90 potential bidders which had received copies of the solicitation. Sixty-eight were located out of state, including the protester, and 22 were local. The Army neither attempted to contact any potential bidders by telephone nor by other means to inform them of the amendment.

Four bids were opened on January 4, 1983. The Army noted that the two lowest bidders, which were both from out of state and whose bids reflected dates of December 28 and 22, 1982, respectively, failed to acknowledge the amendment. The low bidder telephoned the Army on January 4, 1983, and advised that the amendment just had been received. The second low bidder contacted the Army on January 5, 1983, and indicated that the amendment just had been received. Both bidders requested permission to mail the amendment late. The Army also noted that Mott Haven, the third low bidder and the only potential bidder which had advance knowledge of the amendment, acknowledged the amendment by reference only, but the amendment itself was not submitted. The fourth low bidder, a local company, submitted a bid dated December 27, 1982, with an executed amendment, dated January 4, 1983.

Based upon the above circumstances, we concur with the contracting officer's determination that the untimely dispatch of the amendment was a cogent and compelling reason for justifying cancellation due to the lack of adequate competition. Clearly, the untimely dispatch had an adverse impact upon potential and actual bidders in view of the material changes made by the amendment. Furthermore, the protester was the low, responsive bidder only because of its advance knowledge of the amendment, to the clear prejudice

of others interested in the procurement. See Andero Construction Inc., B-203898, February 16, 1982, 82-1 CPD 133. Royson Engineering Company, B-187327, January 27, 1977, 77-1 CPD 69; 45 Comp. Gen. 651 (1966).

Accordingly, we deny the protest.

*for* *Milton J. Aroskar*  
Comptroller General  
of the United States